

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

CALVIN EUGENE BRYANT, JR.)
)
Petitioner,)
)
v.) **NO. 3:15-cv-00685**
) **CHIEF JUDGE CRENSHAW**
BRUCE WESTBROOKS,)
)
Respondent.)

ORDER

Calvin Eugene Bryant, Jr. has filed a Petition for habeas relief pursuant to 28 U.S.C. § 2254. Bryant was convicted in state court of two counts of selling and two counts of delivering a Schedule I controlled substance within a drug-free school zone (stemming from two transactions). The counts were merged and Bryant was sentenced to two concurrent terms of seventeen years imprisonment. Bryant asserts multiple claims in his Petition. The Magistrate Judge has issued a fifty-five page Report and Recommendation in which he recommends denying all of the claims except for one. He finds merit in Petitioner's claim that his trial counsel was ineffective for failing to request a jury instruction for the lesser-included offense of facilitation. (See Doc. No. 48 at 16-32.) As to that claim, the Magistrate Judge concludes that the Tennessee Supreme Court's decision that counsel was not ineffective on that ground was contrary to and an unreasonable application of clearly established federal law, thus warranting habeas relief. (Id.) The Tennessee Attorney General has declined to file objections to the Magistrate Judge's conclusion.¹ (Doc. No. 53.) The

¹ Failure to make objections before this Court waives the State's right to raise issues that it could have raised here on appeal before the Court of Appeals for the Sixth Circuit. See Thomas v. Arn, 474 U.S. 140, 144-46 (1985) (citing U.S. v. Walters, 638 F.2d 947 (6th Cir. 1981)).

Court has nonetheless completed an independent review of the Report and Recommendation and concurs with the thorough analysis of the Magistrate Judge.

Accordingly, for the reasons stated therein, and given the lack of dissent from the State, the Report and Recommendation (Doc. No. 48) is **APPROVED AND ADOPTED** and the Court **GRANTS IN PART AND DENIES IN PART** the § 2254 Petition. The Court **CONDITIONALLY GRANTS THE WRIT OF HABEAS CORPUS**. Respondent shall release Petitioner from custody UNLESS, within 90 days of the date of this order, the State of Tennessee takes action to afford Petitioner a new trial or enters into a plea agreement with Petitioner.

IT IS SO ORDERED.



WAVERLY D. CRENSHAW, JR.
CHIEF UNITED STATES DISTRICT JUDGE